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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,515	06/11/2001	Thomas B. Brighton	47097-00066	3061

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EXAMINER
RUDDOCK, ULA CORINNA

ART UNIT	PAPER NUMBER
1771	

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6

Please find below and/or attached an Office communication concerning this application or proceeding.

A 8-6

Office Action Summary	Application No. 09/878,515	Applicant(s) BRIGHTON ET AL.	
	Examiner Ula C Ruddock	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *19 December 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *21-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *21-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. The Examiner has carefully considered Applicant's amendments and accompanying remarks filed December 9, 2002.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 21-24, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheth (US 4,929,303). Sheth disclose composite breathable films useful as a housewrap (abstract). The housewrap must be permeable to water vapor (col 1, ln 23-25). A preferred breathable film is produced from linear low density polyethylene (col 3, ln 3-6). The breathable film has a thickness of 4 to 6 mils, or .004 to .006 inches (col 4, ln 40-41). Fabrics suitably laminated to the breathable film include an open mesh fabric made of low density polyethylene, polypropylene, and preferably linear low density polyethylene or high density polyethylene (col 6, ln 39-50).

Sheth discloses the claimed invention except for the teaching that the mesh strands have a width of from about 0.005 inches to about 0.060 inches and a depth of from about 0.005 inches to about 0.060 inches. It should be noted that optimizing the mesh strand width and depth are result effective variables. For example, increasing the width of a mesh strand would directly affect the strength of the mesh fabric. Furthermore, increasing the depth of a mesh strand would affect the strength of the laminate. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the mesh strands have a width of from about

0.005 inches to about 0.060 inches and a depth of from about 0.005 inches to about 0.060 inches, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have optimized the mesh strand width and depth motivated by the desire to obtain a mesh with increased durability and strength.

4. Claims 28, 30, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheth (US 4,929,303) in view of Gardner et al. (US 6,506,695). Sheth disclose composite breathable films useful as a housewrap (abstract). The housewrap must be permeable to water vapor (col 1, ln 23-25). A preferred breathable film is produced from linear low density polyethylene (col 3, ln 3-6). The breathable film has a thickness of 4 to 6 mils, or .004 to .006 inches (col 4, ln 40-41). Fabrics suitably laminated to the breathable film include an open mesh fabric made of low density polyethylene, polypropylene, and preferably linear low density polyethylene or high density polyethylene (col 6, ln 39-50).

Sheth discloses the claimed invention except for the teaching that the mesh strands have a width of from about 0.005 inches to about 0.060 inches and a depth of from about 0.005 inches to about 0.060 inches. It should be noted that optimizing the mesh strand width and depth are result effective variables. For example, increasing the width of a mesh strand would directly affect the strength of the mesh fabric. Furthermore, increasing the depth of a mesh strand would affect the strength of the laminate. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the mesh strands have a width of from about 0.005 inches to about 0.060 inches and a depth of from about 0.005 inches to about 0.060 inches,

since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have optimized the mesh strand width and depth motivated by the desire to obtain a mesh with increased durability and strength.

Sheth also fails to disclose that the film layer and fabric layer is comprised of metallocene linear low density polyethylene. Gardner et al. disclose a breathable composite that can be used as housewrap (col 1, ln 48). The film and nonwoven fabric layers include linear low density polyethylene and metallocene polyethylenes (col 5, ln 31-35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used Gardner's linear low density polyethylene and metallocene polyethylenes in the housewrap of Sheth, motivated by the desire to obtain a housewrap having increased breathability.

5. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sheth (US 4,929,303), as shown above, in view of Akao (US 4,653,640). Sheth discloses the claimed invention except for the teaching that there is an adhesive between the film and mesh layer.

Akao discloses a laminate having a sheet layer, a mesh structure, and an adhesive in between the two layers (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used Akao's adhesive layer on the laminate of Sheth motivated by the desire to obtain a laminate with increased structural integrity.

6. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sheth (US 4,929,303) and Gardner et al. (US 6,506,695) as applied to claim 25 above, and further in view of

Akao et al. Sheth and Gardner et al. disclose the claimed invention except for the teaching that there is an adhesive between the film and mesh layer.

Akao discloses a laminate having a sheet layer, a mesh structure, and an adhesive in between the two layers (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used Akao's adhesive layer on the laminate of Sheth and Gardner et al. motivated by the desire to obtain a laminate with increased structural integrity.

Response to Arguments

7. Applicant's arguments filed December 9, 2002, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that Sheth's fabric is not a mesh. This argument is not persuasive because Sheth clearly discloses that the fabric may have a suitably open mesh (col 6, ln 45). Applicant's claims are not limited to a specific type of mesh. Applicant also argues that Sheth fails to disclose mesh strand widths and depths. As shown above, it is well known in the art that optimizing parameters involves only routine skill in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have optimized the mesh strand widths and depths, motivated by the desire to obtain a laminate with increased durability and strength.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C Ruddock whose telephone number is 703-305-0066. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

UCR
February 21, 2003